City of Long Beach
Working Together to Serve

Memorandum

Date: March 21, 2019

To: Mayor and Members of the City Council

From: Patrick H. West, City Manager T.W.

Subject: **Residential Property Assessed Clean Energy (PACE) Consumer Protections**

At its January 22, 2019 meeting, the City Council requested the City Manager and City Attorney to (1) prepare a report on the state of residential Property Assessed Clean Energy (PACE) programs in California, including impacts of recent state legislation and existing programs in Long Beach, to be brought back within 45 days; (2) review and bring back for potential adoption a resolution consenting to the Inclusion of Properties within the City's Incorporated Area in GSFA Community Facilities District No. 2014-1 (Clean Energy) to Finance Renewable Energy Generation, Energy Efficiency, Water Conservation and Electric Vehicle Charging Infrastructure and Other Authorized Improvements; and, (3) review and bring back for potential adoption a resolution consenting to inclusion of Residential Properties within the City's Incorporated Area in the GSFA PACE Program to finance renewable energy generation, energy and water efficiency improvements, electric vehicle charging infrastructure, and other authorized improvements. This memorandum provides a review of the PACE program.

PACE is a way to finance energy efficiency, renewable energy, and water conservation upgrades to buildings. PACE can pay for new heating and cooling systems, lighting improvements, solar panels, water pumps, insulation, among other things. Participation in PACE programs is completely voluntary.

Assembly Bill 811 (AB 811) was approved by the State Legislature and signed by the Governor on July 21, 2008. AB 811 and its amendments authorize local governments to provide financing to qualified property owners for the installation of energy and water efficiency improvements, as well as rooftop solar and other renewable energy installations. Participating property owners repay the cost of the improvements through an assessment levied against their property, payable in semi-annual installments on property tax bills, with a lien filed against the property as security. In turn, government jurisdictions such as cities, counties, or joint powers authorities issue municipal bonds backed by the assessments. This method places the repayment of the loan in first position ahead of repayment of a mortgage to the bank, as it is part of the property tax bill.

The PACE financing mechanism addresses some of the barriers that may prevent property owners from implementing a greater number of energy efficiency, water efficiency, and renewable energy projects. First, it eliminates the need for property owners to pay out-of-pocket, up-front costs for improvements. Second, it establishes a lien obligation that is attached to the property and not the individual borrower.

PACE programs exist for both residential properties and commercial properties. There are some key differences between Commercial PACE and Residential PACE, which has resulted in different rates of adoption and implementation across the United States. The key difference between these two is that Commercial PACE is for properties that generate income from lease payments or revenues from businesses occupying those properties. Residential PACE is for homeowners to finance energy efficiency, renewable energy, and other eligible improvements on their homes. There have been approximately 1,800 commercial projects, and 220,000 home upgrades financed by PACE in California, including at least 1,742 home upgrades in Long Beach.

Current PACE Involvement

On June 22, 2010, the City Council adopted a Resolution authorizing participation in the Los Angeles County Clean Energy Program, which has since been renamed as L.A. County PACE. The City of Long Beach (City) is participating in both L.A. County's Residential and Commercial PACE Programs. Long Beach homeowners may work with one of two L.A. County-approved residential PACE program administrators: PACEFunding and HERO. Until 2015, L.A. County PACE was the only program authorized to operate in Long Beach.

On April 7, 2015, the City Council adopted a Resolution authorizing participation in three Commercial PACE programs: Figtree PACE, CaliforniaFIRST, and California HERO. Authorizing additional PACE programs to operate in Long Beach allowed smaller commercial projects that were not eligible under the L.A. County PACE Program to be completed. These Commercial PACE-installed improvements are financed by the issuance of bonds by the California Statewide Communities Development Authority (CSCDA), California Enterprise Development Authority (CEDA), or Western Riverside Council of Governments (WRCOG).

On September 4, 2018, the City Council adopted a Resolution authorizing participation in three additional Commercial PACE programs: CounterpointeSRE, CleanFund Commercial PACE Capital, and Petros PACE Finance. These additional commercial PACE programs are operated by the CSCDA and were authorized to provide more choice for consumers and inject competition into the marketplace.

Risks

Historically, staff has recommended expanding commercial PACE providers. Staff has not recommended residential PACE providers be included in these previous expansions as there had been concerns about sufficient underwriting and financial qualification standards for residential projects, as well as the competitiveness of loan pricing and instances where disadvantaged homeowners unwittingly entered financial agreements they could not afford. For more information, please see Attachment A.

Unlike traditional lenders, most PACE programs did not use traditional indicators, such as debt-to-income ratios, or FICO credit scores, to evaluate a property owner's ability to repay. Instead, they evaluated the value of the property in relation to the size of the lien. PACE becomes the senior lien on the property, meaning failure to pay allows bondholders to seek foreclosure. Most PACE programs relied on contractors to generate demand for financing and some contractors could possibly encourage property owners to seek financing for improvements that they cannot afford, potentially resulting in foreclosure. These risks were especially magnified for homeowners with low financial literacy.

Commercial PACE programs mitigated some of the risks posed by residential PACE programs. Commercial PACE programs tended to require more engagement from the PACE lender, so it was not simply the contractor and the property owner working together. Commercial programs require the consent of the primary mortgage holder before executing an agreement. In response to this request for consent, most lending institutions complete a thorough review of the borrower, essentially re-underwriting the mortgagee. This process mitigated some of the risks posed by residential PACE programs. In addition, the financial literacy of commercial property owners typically exceeds that of homeowners, allowing the owners to better assess the benefits and risks of PACE financing.

Of the over 200,000 home upgrades financed by PACE in California, staff found no evidence of a PACE provider initiating foreclosure proceedings, this is most likely because of the risk of losing a house over a smaller loan forces the homeowner to take other steps to prevent that drastic action.

Litigation

Attorneys representing homeowners filed lawsuits in Los Angeles County Superior Court against L.A. County, as well as L.A. County's PACE Providers, Renovate America and Renew Financial, on April 11, 2018. The lawsuits seek class-action status for borrowers who took out loans between March 2015 and March 2018 that had excessive debt-to-income ratios or were left with very little residual income after making their loan payments. This class time frame was chosen because as of April 1, 2018, new PACE Consumer Protection Laws came into effect. For more information, please see Attachment B.

New Consumer Protections

In 2017 and 2018, four pieces of legislation to improve and regulate the PACE process were signed into law. On October 4, 2018 Governor Jerry Brown signed Assembly Bill 1284 (AB 1284) and Senate Bill 242 (SB 242). On September 27, 2018, the Governor signed Assembly Bill 2063 (AB 2063) and Senate Bill 1087 (SB 1087). This legislation increases transparency of PACE program terms for property owners, include ability-to-pay as a part of PACE underwriting standards, and establish a regulatory agency for PACE providers.

AB 1284 establishes regulatory framework and licensing for PACE programs, creates new underwriting standards, and tightens PACE programs' existing underwriting standards. To establish regulatory framework and licensing, the Department of Business Oversight (DBO), which regulates banks, credit unions, and other non-bank lenders in California, now has oversight over licensing and standards for the PACE industry. The DBO oversees and licenses all "PACE program administrators," a person administering a PACE program on behalf of a public agency. New underwriting standards include an evaluation of a property owner's ability to pay, to determine that property owners can meet their annual PACE obligation, in addition to their current debt obligations and basic household expenses. This bill strengthens and standardizes previous underwriting standards for PACE financing based on home equity and on-time mortgage and tax payment history. It also requires that the most accurate Automated Valuation Models are used for establishing the value of the home.

SB 242 requires a telephone confirmation for all homeowners, a right to cancel, new marketing standards, and reporting requirements. PACE program administrators are required to call every property owner to confirm that they acknowledge and agree to the key terms of their PACE financing prior to the commencement of work on the property. Homeowners also have a three-day right to cancel their PACE assessment after they sign their contract. Program administrators are prohibited from paying "kickbacks" to contractors and may not pay incentives to property owners in exchange for PACE financing. PACE program administrators are also required to report data to local government partners, including estimates on energy and water savings, local economic and job impacts, and the types of products installed and age demographics of homeowners served.

AB 2063 changes when PACE program administrators are required to determine the homeowner's ability to pay. It adjusts this time from prior to the recordation of the assessment (after work is completed) to prior to the execution of the assessment contract and the home improvement contract (before work has started). This protection ensures that no work can begin, and that the homeowner has no financial obligation, until the ability-to-pay has been determined.

SB 1087 provides more transparency for consumers. It requires that the DBO publish a searchable list of contractors that are enrolled to offer PACE financing on its website. The bill also requires the DBO to publish a list of contractors that have been suspended by DBO for disciplinary reasons on its website.

A report released by Renew Financial in August 2018 found that the enhanced statutory framework created by SB 1087 has had a part to play in a major drop in PACE applications. The report found PACE applications were down 49 percent since the start of 2018. The report continued that the new underwriting requirements and consumer protections may be discouraging or preventing otherwise eligible homeowners from choosing PACE financing. For more information, please see Attachment C.

Residential Pace Program Administrators

There are currently six residential PACE programs operating in California. These programs can only operate with the authority of a government sponsor. The government sponsor issues debt secured by tax assessments and the funds generated by the bonds provide financing for the improvements. The six programs are as follows:

- CaliforniaFirst;
- AllianceNRG;
- PACEFunding, as sponsored by the California Statewide Communities Development Authority (CSCDA);
- HERO, as sponsored by the Western Riverside Council of Governments (WRCOG);
- Energy Efficient Equity, or E3, as sponsored by the California Municipal Finance Authority (CMFA); and,
- Ygrene, as sponsored by the California Home Finance Authority (CHF).

Ygrene Sample Interest Rates and APR

Term	Project Amount	Original Face Amount	Rate	APR
5	$25,000.00	$28,624.00	7.25	10.59
10	$25,000.00	$28,824.00	7.99	10.155
15	$25,000.00	$28,921.00	8.35	10.036
20	$25,000.00	$28,959.00	8.49	9.914
25	$25,000.00	$28,959.00	8.49	9.746
30	$25,000.00	$28,959.00	8.49	9.639

The above chart includes sample interest rates and APR for a hypothetical residential project financed through PACE Provider, Ygrene. This financing also includes fees for processing and underwriting, recording and disbursement, title and escrow, a 1 percent cost recovery fee, and a 3 percent origination fee. Though PACE loan rates are lower than unsecured loans, there are more traditional financing options, such as Home Equity Loans, that historically have lower borrowing costs. However, Home Equity Loans are not the best fit for every homeowner, especially for those who need a quicker approval process times than Home Equity Loans can provide.

Next Steps

Through L.A. County PACE, two of the above residential PACE program administrators are currently operating in Long Beach: PACEFunding and HERO. Historically, the City has authorized multiple Commercial PACE programs at once to provide more choice for consumers and inject competition into the marketplace. If the City were to follow this precedent in the context of residential PACE programs, it would require Resolutions authorizing (1) the City to join the selected Residential PACE programs, and (2) the associated government sponsors to accept applications from property owners, conduct contractual assessment proceedings, and levy contractual assessments within the City.

While City staff continue to have concerns about the Residential PACE program, particularly about the impact to disadvantaged communities, the recent changes in State law are a step in the right direction to address some of those concerns. Although the rates charged tend to be higher than other available lending instruments, these products are at times the only available financing tool to some borrowers to install energy efficient upgrades. The City Council has expressed interest in this concept over the years, and while it has not been recommended by City staff in the past, the recent changes do provide some additional layers of consumer protection. Should the City Council wish to proceed and include a City-approved Residential PACE program, staff strongly recommend adding multiple vendors to generate competition and better pricing for Long Beach residents. City staff will return to the City Council in the spring with the appropriate resolutions for the City Council to consider whether to offer this service to Long Beach residents.

If you have questions or comments, please contact Larry Rich, Sustainability Coordinator, at (562) 570-5839.

ATTACHMENTS

A. Los Angeles Times Article: *These loans were created to help homeowners, but for some they did the opposite*
B. Los Angeles Times Article: *Lawsuits filed against L.A. County, lenders over green energy program*
C. Renew Financial California Market Update Report

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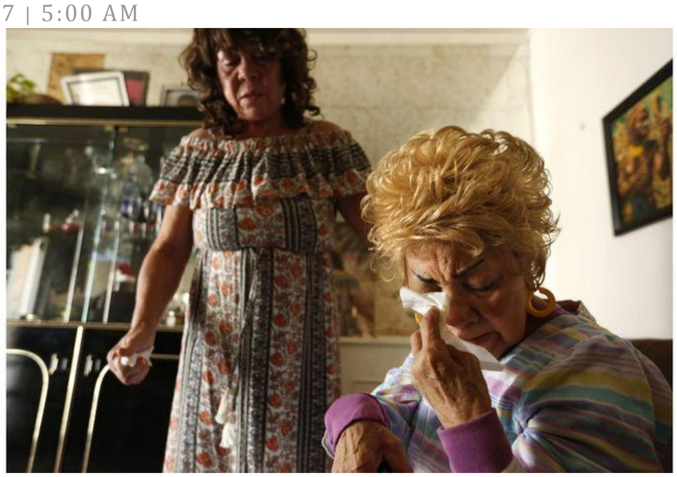
DEPARTMENT HEADS

These loans were created to help homeowners, but for some they did the opposite

By ANDREW KHOURI
JUN 04, 2017 | 5:00 AM



Ossie Hill, 86, right, cries over the possibility of foreclosure of her Los Angeles home as her daughter Cassina Edwards, 59, looks on. Hill is facing annual payments of $5,500 for a roughly $50,000 loan through the PACE program. (Genaro Molina / Los Angeles Times)

After nearly half a century at the house on South Sierra Bonita Avenue in Los Angeles, Ossie Hill wanted to spruce up the two-bedroom home she and her late husband purchased in the early 1970s.

But the 86-year-old didn't have the money.

Then her daughter, Cassina Edwards, had an idea, recalling radio ads for a local home-improvement contractor: "We can help you. Low income. No credit check. Government program. Give us a call."

So Edwards did.

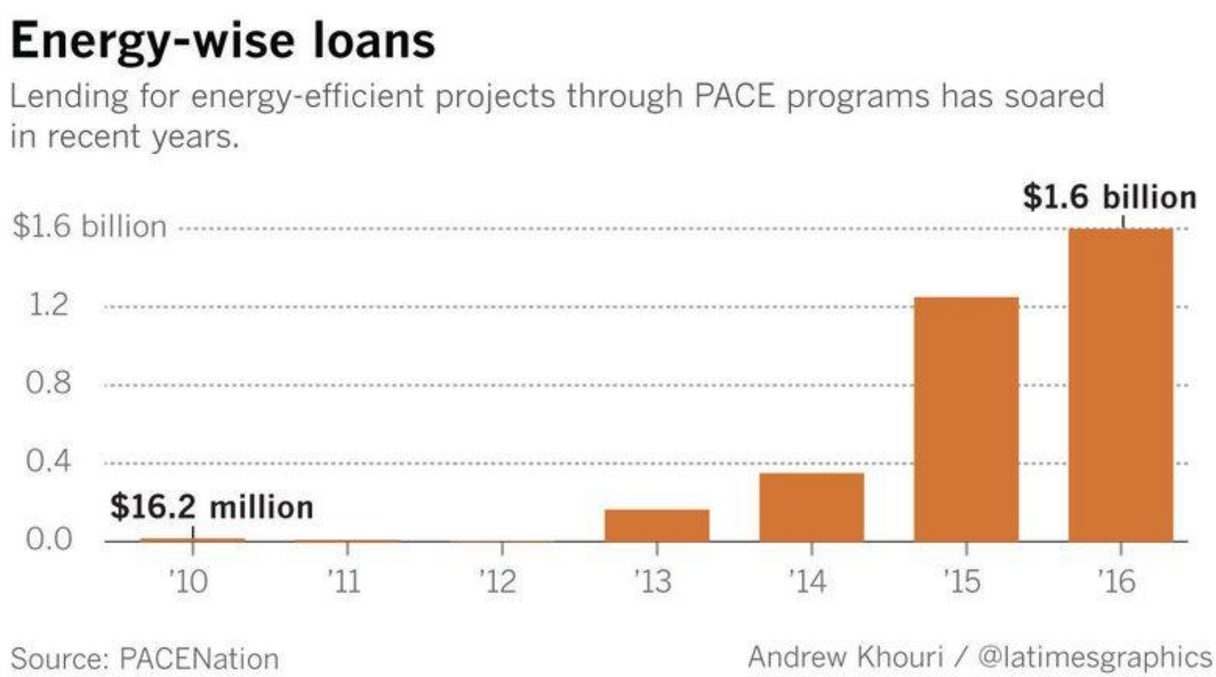
Now her mother, who receives $11,600 a year from Social Security and suffers from dementia, is struggling with a roughly $50,000 loan paid through a $5,500 annual tax assessment — an increasingly popular form of home-improvement financing known as PACE.
Edwards said the contractor explained that "a government program" would help the octogenarian afford the improvements, but never explained how the payments would work or warned them Hill could lose her house if payments were missed.

The first $5,500 bill last year came as a surprise, said Edwards, who helps manage her mother's finances. With her mother unable to afford it, it has gone unpaid.

"I want my mother to keep her home. This is all she has," Edwards said on a recent afternoon, as Hill sat next to her, eyes closed, head rested on her cane. "It's pretty sad that they prey on people for your lack of knowledge. If you came in and were truthful about it, this would have never happened."

Consumer groups, regulators and lawmakers are increasingly raising concerns about Property Assessed Clean Energy loan programs, which are authorized by governments but largely administered and funded by private lenders. In particular, the focus is on independent solar, plumbing and roofing contractors who pitch the loans and sign up consumers through online software — a system that's drawn scrutiny but helped the industry grow aggressively.

The total amount lent for residential PACE projects topped $1.5 billion in 2016, up from $350 million just two years earlier, according to trade group PACENation.



The loan programs are meant to serve a public good — allowing more people to finance solar and other energy-efficiency projects.

The loans are secured by a property lien and if unpaid a borrower can be foreclosed upon. Consumers put no money down and usually don't pay anything for at least six months. Eligibility is largely based on home equity. Credit score and income are not a factor.

Many consumers simply know their loans as the HERO program, the name of the PACE program from the industry's biggest lender, Renovate America in San Diego.

Critics say PACE can serve a worthy purpose, but worry too many consumers are agreeing to loans they don't need or understand after being contacted by aggressive contractors, who often make cold calls or engage in door-to-door marketing. According to lawsuits and interviews with borrowers and their advocates, some contractors are inflating the cost of their services and misrepresenting how much the loans cost or how they are paid back.

Contractors can get consumers approved on the spot, having them sign documents on a tablet computer — an experience advocates say can be confusing, particularly for elderly homeowners. Lenders then send final financing documents to homeowners for their signature, with the process taking a few hours to several days.

"They go out and push these sales and these projects without really any care whether people can actually afford it or not," said David Hiller, a Pasadena attorney who has handled PACE cases for consumers. "It feels exactly like what was going on with mortgage lending precrisis."

Cassina Edwards is upset over the possibility that her mother, Ossie Hill, 86, may lose her home to foreclosure due to non-payment for a PACE loan in Los Angeles.

The three major private lenders — Renovate America, Renew Financial of Oakland and Ygrene Energy Fund of Petaluma, Calif., — say most of their customers come away happy and point to low default and delinquency rates as evidence the programs are working.

Cisco DeVries established the first PACE program last decade while working for the city of Berkeley, later founding Renew Financial, where he is the chief executive. He says PACE has "democratized clean energy" by allowing consumers without much cash and less-than-stellar credit to fix their homes.

"We have had homeowners in tears" after they finally could finance repairs, DeVries said. "Any public policy, any private effort, by nature is going to be imperfect. But PACE has to be one of the most successful energy-efficiency programs in the history of the state and the country."

The Western Riverside Council of Governments launched its PACE program in 2011 as a way to use private money to support a decimated construction industry and help homeowners conserve energy.

It has partnered with Renovate America and Renew Financial to offer loans and now oversees one of the largest PACE operations in the U.S., covering more than 380 municipalities statewide after it opened eligibility beyond Riverside County. In the last fiscal year, PACE fees accounted for $9.5 million of the council's revenue, or 17.5% of its total budget, said Rick Bishop, the group's executive director.
"Generally, it's been really, really positive," Bishop said of PACE. "We have hundreds and hundreds of really solid contractors. It's a little disappointing the contractors are all getting painted with the same brush."

A more typical experience, proponents say, is that of Lorri MacMillan, who last year used a $14,000 HERO loan to pay for an air conditioner. The Rancho Santa Margarita resident said her contractor didn't misrepresent anything and Renovate called her to go over terms in detail — something the company said it began doing for every customer in recent months.

"It was a great process," the 54-year-old bank systems analyst said.
PACE programs got their start in 2008 when Gov. Arnold Schwarzenegger signed legislation that authorized the special type of financing.

To fund the programs, governments issue bonds backed by the borrower tax assessments and then typically transfer collection rights to private PACE companies. The firms take those assessment bonds and compile them into securities and sell them on Wall Street to finance new loans.

Across the nation, less than 1% of all securitized PACE loans that Kroll Bond Rating Agency tracks have defaulted, said Cecil Smart, a senior director at the company. Renovate America said over the last five years, none of its clients have been foreclosed on for not paying their PACE loan, but nearly 80 homeowners with such financing, or 0.08% of the total, have been foreclosed upon after they didn't pay their mortgage. Consumer advocates say it's too early to tell if those rates will hold.

Renovate America has also drawn scrutiny from regulators following several Wall Street Journal stories, including one that revealed the firm paid the debts of some borrowers but didn't tell bond investors. The company said it did so in 83 cases in which borrowers were confused about when their payments would start.

Christian Guzman hasn't defaulted on his PACE loan, but he said he's struggling after a contractor walked through his L.A.-area neighborhood two years ago and asked if he wanted a free estimate to fix his roof.


Edwards says her mother was never warned she could lose her house if PACE loan payments were missed. (Genaro Molina / Los Angeles Times)

A few days later, Guzman said the contractor from All American Design in Torrance came back and told him he was qualified for more than $46,000 in HERO financing, which would cover a new roof and solar panels. Guzman said he agreed to both and signed documents on a tablet after the contractor told him a government grant would cover the $26,000 roof.

He recalled the tablet showing he would only pay around $20,000 in total, but acknowledged he didn't get a good look at the device.

"He held on to it pretty well. We saw only what he wanted us to see," Guzman said. After the job was complete, he said he received a final payment schedule from Renovate that detailed he would owe much more — over $12,000 annually for five years — and later learned there would be no government grant.

The All American salesperson told him not to worry, and "after a while he just stopped answering," the 29-year old electrician said. Guzman also reached out to Renovate for help, but said he was told there was nothing they could do.

Renovate said Guzman's signature was electronically signed on a financing contract that detailed the more than $12,000 annual payment a week after the first document he signed, which was an application.

Guzman said he doesn't recall signing the second document.

"I honestly don't know how I am going to do this," he said. "It's an extra $1,000 a month I don't have."

All American Design did not respond to requests for comment. Renovate said it has kicked All American out of its program because the company didn't meet its standards under a new contractor rating system.

Today, California, Florida and Missouri have active residential PACE programs, while 19 other states have authorized such financing though programs aren't up and running, according to PACENation. Many states also have commercial PACE programs for businesses that have proved far less controversial.

The residential loans average around $25,000 and run five to 30 years. The loans typically carry rates of 6.5% to 8.49%, meaning with today's low-interest rates someone with good credit can often get a better deal with a home equity loan.
Most governments turn to private PACE companies to run the programs. The companies, meanwhile, use contractors to sell the loans.

"It's pretty painless as far as qualifying," contractor William Redmond, co-owner of AlumaCovers in Riverside, said of the HERO program. "It allows a client to afford what normally they couldn't afford. So, it's opened up another channel of new [sales]."
Speed is part of the allure.

Ygrene promises contractors training, lead generation, marketing materials and the ability to get customers "pre-approved in 30 minutes or less." Renovate offers "state-of-the-art tools" to "streamline every stage of your project." Renew Financial pledges that contractors can "submit financing documents with your customer at the kitchen table."
Redmond says he hasn't heard of contractors misusing PACE and that he tells clients to direct financing questions to Renovate.

"They don't make things complicated and they don't make a bunch of red tape," Redmond said.

But consumer groups say the swift approval process — along with weak contractor oversight and lack of underwriting — is leading to problems.

"When someone is weighing a $45,000 loan to put solar panels on the house, why do they need speed for that?" said John Rao, an attorney with the National Consumer Law Center. "You should not be rushing people through for these major retrofits."

The companies add that they disqualify for bankruptcies and missed mortgage payments and say speed is often needed for emergency repairs such as a broken air conditioner in 100-plus degree heat.

Borrowers also have a three-day right to cancel and contractors aren't paid until a homeowner signs off on a completed work form, Ygrene CEO Rocco Fabiano noted.


A lawsuit filed by Edwards alleges a 360 Remodeling employee tricked her mother into signing up for the loan by asking her to sign a tablet to only authorize her creditworthiness. In a court filing, the 360 Remodeling salesperson generally denied all allegations. (Genaro Molina / Los Angeles Times)

The three major companies are taking steps to improve consumer protections. For example, they say they now have a phone call with all consumers before approving a loan to ensure they understand the terms of financing — as recommended by the Department of Energy late last year.

Renovate said it will start using income as part of its underwriting later this month and in January it launched a new contractor rating system, removing more than 80 companies — 10% of the contractors that frequently used its financing.

Rao, of the national consumer group, acknowledged that consumers have long complained about aggressive, unethical contractors, but said PACE put those problems "on steroids," given how easy it is to qualify for funding.

"They are making a lot of money and they are creating the financial opportunities for these contractors," he said.

The California Contractors State Licence Board is investigating 50 cases in which consumers alleged solar contractors misrepresented PACE financing. Those making the complaints are often elderly or don't speak fluent English.

Two lawsuits filed in Los Angeles County allege that an employee from G.E. Solar Solutions of La Mirada signed homeowners up for Ygrene PACE financing after pitching the loans as leases for solar panels that would be paid off through their energy bills and also save them thousands of dollars.
The homeowners, who speak only Spanish, allege their signatures were forged on English-only Ygrene contracts and they estimate their debt exceeds $100,000, according to the two complaints.

One of the owners, Dolores Artiga, said she worries she can't keep up with the loan payments.

"It is difficult," Artiga, who works for a cleaning company, said in Spanish. "What I make is not enough money to pay this."

In court documents, an attorney for G.E. Solar denied the allegations.

In a statement, Ygrene said G.E. Solar, not Ygrene, is alleged to have misrepresented the financing and, if those allegations are true, the contractor's actions are "inconsistent with Ygrene's consumer protections policies and procedures."

Scott Minnix, director of the L.A. County Department that overseas PACE, said in a statement that the county has worked with its partners, Renovate America and Renew Financial, "to ensure the highest standards of consumer protection and fiscal accountability."

The county said that there has been no PACE foreclosures and that it has set up reserve funds to cover missed borrower payments for a time, making a quick foreclosure unlikely for those who've missed PACE payments.

Even so, Edwards, the daughter of the Los Angeles homeowner, is worried and in April filed a lawsuit against Renovate and 360 Remodeling of Burbank, which painted her mother's house and installed windows and a patio cover it said would reduce energy use. The lawsuit alleges a 360 Remodeling employee tricked Hill into signing up for a loan with an annual payment of more than $5,000 by asking her to sign a tablet to only authorize her creditworthiness.

A final contract for Edwards and Hill to review was to be put in the mail, the complaint says.

In a court filing, the 360 Remodeling employee denied all allegations.

Frank Cicora, the company's general manager, said he didn't know what the worker said, but the family knew Hill was taking out a loan and the financing terms would have been explained on the tablet and by Renovate over the p hone.

"They are upset because they can't afford something they committed to," he said, adding the family agreed to move ahead with the project.

A spokesman for Renovate denied the complaint's allegations, which include weak contractor oversight, and said the company will defend itself vigorously. He said 360 Remodeling "scores well" in Renovate's contractor rating system.
Edwards said a final contract to review never came in the mail, but she trusted the contractor, who quickly began ripping up the outside of her mother's home.

"They already tore down the house. If I told them to stop, who would fix it?" Edwards said, sitting next to her mother on the living room couch. "This situation has been very stressful for my mom."

A few minutes later, Hill began to tear up and asked to leave.

To access a digital version of this article, please visit*: https://www.latimes.com/business/la-fi-pace-loans-20170604-story.html*

Lawsuits filed against L.A. County, lenders over green energy program

By ANDREW KHOURI
APR 12, 2018 | 1:45 PM

Homeowner Reginald Nemore says he can't afford his PACE loan for solar panels and is worried he will lose his house. (Wally Skalij / Los Angeles Times)

Attorneys representing homeowners filed lawsuits Thursday against Los Angeles County, alleging a county program that funds solar panels and other energy-efficient home improvements is a "plague" that's ruined the finances of many borrowers by saddling them with loans they cannot afford.

The twin suits seeking class-action status were filed in Los Angeles County Superior Court against the county, as well as Renovate America and Renew Financial, the county's private lender partners for the Property Assessed Clean Energy program. The complaints say borrowers are now at risk of losing their homes because the loans are liens on a house, lacked adequate consumer protections, and were marketed and sold by unscrupulous contractors that were not properly monitored.

"Many PACE participants are living hand-to-mouth to hold onto their homes, fearful of what is yet to come," the nearly identical suits say. They note that many of those in trouble have low incomes, are elderly or don't speak English as their first language.

L.A. County representatives did not respond to a request for comment.

In a statement, Renew Financial said it couldn't comment on pending litigation, but said it's worked with government authorities to improve consumer protections, including new state laws that took effect this year.

Renovate America said it similarly supported the enhanced protections and finds "no merit in the allegations in the complaints."

Specifically, the lawsuits allege the county and lenders have committed financial elder abuse, while the lenders charged inflated interest rates and broke a county contract that said they were to provide "best in class" protections against predatory lending and special safeguards for seniors.

While the lenders have said they checked borrowers for previous bankruptcies or missed mortgage payments prior to approval, they did not ask for their incomes until recently, basing approvals largely on home equity.

The lawsuits said the county knew, or should have known, its program would harm vulnerable homeowners and has looked the other way as problems piled up.

The suits seek class-action status for borrowers who took out loans between March 2015 and March 2018 and that had excessive debt-to-income ratios or were left with very little residual income after making their loan payments. The lawsuits said the class size is unknown, but argued PACE has been a "disaster for thousands of vulnerable homeowners."

The suits, brought by Irell & Manella, Public Counsel and Bet Tzedek, ask that loans for borrowers in the class be canceled and that homeowners be returned any money paid.

"We can't keep up with the number of complaints about this program," said Jennifer H. Sperling, an attorney with Bet Tzedek. "This is a systemic problem."

The class time frame was chosen because as of April 1, under a new state law, PACE lenders must ask for a borrower's income and make a "good faith determination" of a borrower's ability to repay.

Another new bill mandated that PACE providers have a phone conversation with all homeowners before they take out the loan to ensure they understand the terms. Renew Financial has said it's always had such calls and Renovate America said it started doing so before the law passed.

The bills, which included other reforms as well, were signed by Gov. Jerry Brown last year following repeated complaints over unscrupulous contractors who market and sign people up for the loans on tablet computers and smartphones.

"If they had let me know from Day One this is what [you are] going to get into ... there is no way I would have signed," said Reginald Nemore, a 58-year-old former bus driver who had to retire after a back injury.

He took out a Renovate America loan for solar panels and attic insulation in 2016. Nemore said before a contractor handed him a smartphone to sign, the individual didn't explain to him exactly how much he would be paying. He said he was told he'd qualify for a $7,000 government check for going green, but found out it isn't available to him.

Nemore said he wasn't told he could lose his house if he didn't pay and only found out the true cost when paperwork arrived in the mail after the loan was finalized. He now owes roughly $240 a month for 25 years, even though he said he and his wife, who suffers from multiple sclerosis, sometimes only have $50 or less in their checking account each month.

Nemore's attorney said he and his wife only take in around $2,475 from Social Security disability payments.

"I don't want to be uprooted," Nemore said. "But I don't know if it is going to be up to me to have that choice."

First started in 2008, PACEprograms are established by government authorities, which allow the privately financed loans to be repaid as line items on property tax bills. In addition to solar panels and energy-efficient air conditioners, the loans in California can be used for items such as low-flow toilets that save water.

In Southern California, Los Angeles, Riverside, San Bernardino and San Diego counties have approved PACE programs and contracted with private lenders to fund and largely operate the efforts.

If PACE loans go unpaid, a homeowner can be foreclosed upon. However, Renovate America and Renew Financial — which partner with Los Angeles County and issue loans under the Hero and California First programs, respectively — told The Times last year they hadn't foreclosed on anyone for nonpayment of PACE loans.

L.A. County said it had set up reserve funds to cover missed borrower payments for a time, making a quick foreclosure unlikely for those who've missed PACE payments.

Program proponents, including the lenders, have praised them as a tool for saving energy and combating global warming. And they say most customers have come away happy.

A recent study from the Lawrence Berkeley National Laboratory found PACE programs boosted the deployment of residential solar photovoltaic systems in California cities with the program by 7% to 12% between 2010 and 2015.

But consumer groups say contractors who serve as de-facto mortgage brokers too often misrepresent how the financing works, sticking people with loans they can neither understand nor afford. And they note mortgage servicers will often cover the PACE bills for a time and might be the ones foreclosing upon a delinquent homeowner.

In the lawsuits filed Thursday, attorneys allege on behalf of their clients that Renovate America and Renew Financial failed to screen and monitor their network of contractors and encouraged predatory lending and aggressive marketing.

Often, the suit says, contractors served as a homeowner's "primary" source of information about the loans. Lenders told contractors they didn't need to determine if customers could afford the loan and rubber stamped payment to contractors, without regard to whether they followed certain guidelines, the lawsuits allege.

Renovate America has said it's tried to weed out bad contractors, kicking them out when they don't follow the rules. In October, the company announced its chief executive was stepping down and it retained a law firm to "conduct and make public a third-party review of practices and procedures."

In its statement Thursday, the company said a different outside review of its loans for the Western Riverside Council of Governments found it followed the applicable consumer protections that the agency set up more than 99% of the time.

To access a digital version of this article, please visit*: https://www.latimes.com/business/la-fi-pace-lawsuits-20180411-story.html*

Attachment C

RENEW FINANCIAL™

CALIFORNIA MARKET UPDATE: PACE FINANCING IS AT RISK

Statutory fixes are needed to preserve the long-term viability of California's most successful financing program for residential energy efficiency and solar PV

by **Cisco DeVries**, Founder and Chief Innovation Officer, Renew Financial

August 2018

Overview

From its inception in a small California city in 2008, Property Assessed Clean Energy (PACE) has grown substantially in recent years. Until recently, it was on the verge of becoming a major industry, financing close to $2 billion in home improvements at its peak in 2017.

In California alone, more than 160,000 homeowners have used PACE financing to make their homes more efficient, comfortable and secure. Across the state, 400+ local jurisdictions offer one or more PACE financing programs for their residents, making PACE available to more than 90% of California's population.

During the past six months, however, a significant challenge has emerged for California's residential PACE industry. Indeed, the ongoing viability of PACE in California is under threat due to steep declines in program participation. The purpose of this paper is to provide a brief overview of the root causes of PACE's recent decline and to offer a potential path forward – so that California communities can continue to benefit from PACE's original promise: to empower property owners, curb greenhouse gas emissions and create local jobs, all without spending any taxpayer or ratepayer dollars.

> *"One of the most important policies helping California build a clean energy future is Property Assessed Clean Energy (PACE)... [Participating] homeowners can expect to save about $2 billion on future utility bills. That's extra money in the pockets of hardworking homeowners across California."*
>
> **David Hochschild** - Commissioner,
> California Energy Commission,
> the state's primary energy policy and planning agency,
> May 8, 2017

PACE Has Facilitated Dramatic Reductions in Energy and Water Use

During the past ten years, PACE financing has proved to be a critical policy tool for achieving multiple policy goals simultaneously. In particular, PACE financing:

- **Democratizes access to energy and resilience measures.** In 2017, the non-profit Energy Programs Consortium conducted an analysis to determine whether and how PACE financing expanded access to clean energy for low and moderate-income homeowners. After completing the analysis, project director Mark Wolfe said, "PACE is the first energy loan program to reach significant numbers of low income homeowners and help them to retrofit their homes."[1]

- **Increases deployment of residential solar photovoltaic (PV) systems.** Lawrence Berkeley National Lab (LBNL) conducted a multi-year study on R-PACE's impacts on solar PV deployment. The Lab found that "residential Property Assessed Clean Energy (R-PACE) programs increased deployment of residential solar photovoltaic (PV) systems in California, raising it by about 7-12% in cities that adopt these programs." The Lab also concluded that "the majority of solar PV deployment financed by R-PACE programs would likely not have occurred in their absence."[2]

- **Creates local jobs, reduces greenhouse gas emissions and more.** Across the country, PACE financing programs for residential and commercial buildings have achieved significant economic and environmental impacts. The impacts related to R-PACE are nearly ten times greater than the impacts of commercial Property Assessed Clean Energy (C-PACE). Here are some of R-PACE's cumulative impacts:

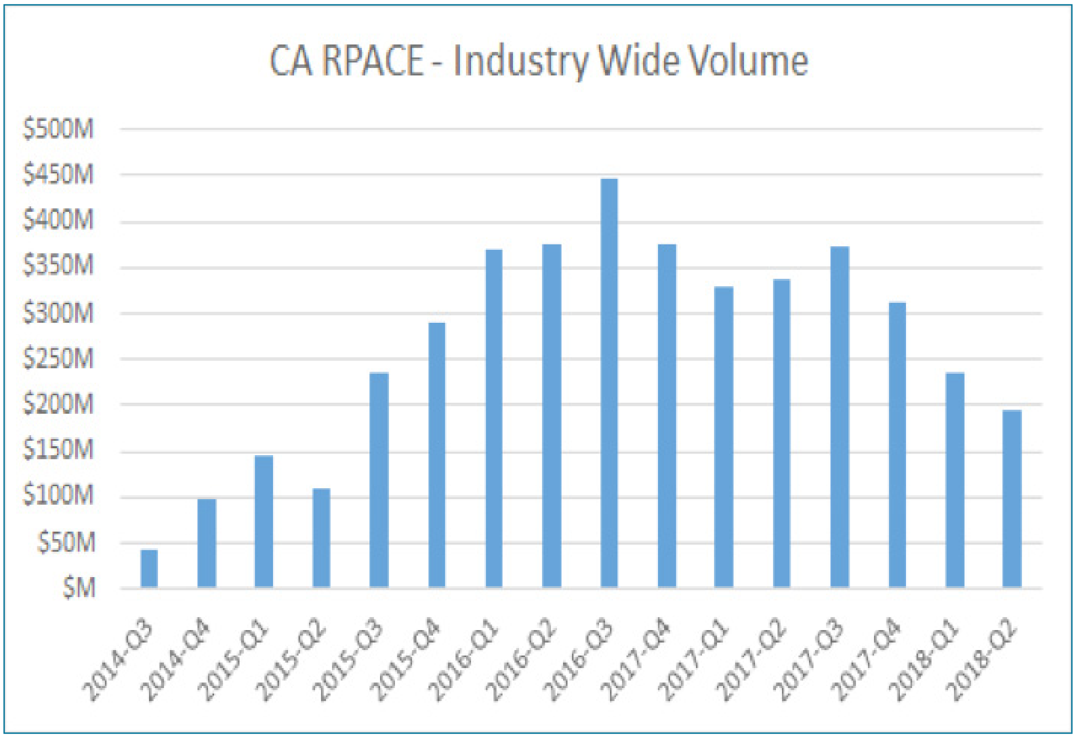
  - Happy property owners: More than 220,000 home upgrades nationwide
  - Job creation: 42,000 jobs created in the home improvement industry
  - Energy savings: Homeowners are projected to save 17.7 billion kilowatt hours of electricity during the lifetime of the installed measures
  - Water savings: Homeowners are projected to save 11.5 billion gallons of water
  - Emissions reductions: Residential PACE projects to date are projected to reduce carbon emissions by 4.7 million tons – equivalent to taking more than 925,000 cars off the road for a year

These benefits are the result of voluntary home improvements funded with 100% private capital.

[1] http://www.energyprograms.org/wp-content/uploads/2017/11/lmipacepress.pdf

[2] https://emp.lbl.gov/news/new-study-estimates-impacts-novel-private

California's R-PACE Growth & Decline



While PACE financing was first offered in 2008, a decision by Fannie Mae and Freddie Mac in 2010 put the brakes on R-PACE. R-PACE volume remained relatively low from 2008 to 2013, until California Governor Jerry Brown established a $10 million PACE Loss Reserve Account under the purview of California's State Treasurer. The reserve account was designed to repay mortgage holders should they experience any PACE-related losses in the event of foreclosure. In five years, and with billions of dollars in financings, no mortgage lenders have ever tapped the Reserve Account.

PACE volume fell off slightly between 2016 and 2017, with annual PACE-financed volume decreasing by about 18% year-over-year.

2018 is on track to show a major decrease in R-PACE volume compared to previous years. Renew Financial's R-PACE programs in California are down 42% in the first half of 2018 compared to 2017.

Recent R-PACE Laws Were Important Improvements But Have Led to Unintended Consequences

While a few factors account for the precipitous decline in RPACE volume from its height in 2016, the single largest factor is an enhanced statutory framework.

In 2016 and 2017, the California Legislature expanded and strengthened the statewide standards for R-PACE. Three bills passed the legislature over the course of two sessions with strong bipartisan approval. The bills were crafted with input from a diverse coalition that included local governments, consumer advocates, real estate professionals, mortgage lenders, credit unions, business associations, environmental organizations and PACE providers.

Overall, the current statutory framework for R-PACE in California now includes the following key components:

- Income-based underwriting with documentation verification requirements
- A written disclosure for R-PACE modeled after the federal "Know-Before-You-Owe" mortgage disclosure
- A requirement for live, recorded phone calls that serve as an oral version of the written disclosure form to help ensure homeowners understand all financing terms of the PACE contract
- Homeowner's right to cancel R-PACE financing within 3 days after signing the contract
- Department of Business Oversight (DBO) authority to regulate private sector PACE program administrators
- Other enhanced underwriting criteria

The expanded statutory framework for R-PACE in California was certainly necessary. Indeed, strong consumer protections are essential for the long-term viability of R-PACE. The residential home improvement industry has a longstanding problem with unscrupulous contractors cutting corners. This problem is minimized with R-PACE because PACE administrators require participating contractors to meet stringent qualifications and program requirements. As a result, contractor misconduct in the PACE industry is relatively rare. But it does happen, and when it does, corrective action must be taken. The new laws make sure of it.

PACE financing in California is now very highly regulated. Most of the underwriting requirements and consumer protections enshrined in statute have achieved their intended effect, but a few have led to unintended consequences. The biggest consequence is that tens of thousands of eligible California homeowners are no longer considering—and in many cases not even being made aware of—PACE financing as an option to make their homes more energy efficient. Since the start of 2018, PACE applications are down 49%.

What's going on?

R-PACE Underwriting Led to Decline in Program Participation

We conducted a thorough review to determine which, if any, of the various new statutory requirements might be discouraging or preventing otherwise eligible homeowners from choosing PACE financing. We learned three things. First, the new laws specifically prohibit thousands of creditworthy, moderate-income California homeowners from using PACE financing to upgrade their homes. This is unfortunate for several reasons, but not least because these are precisely the homeowners that PACE financing is designed to help. Without access to PACE, they may not be able to install a solar system at all.

Second, some of the new requirements are dissuading moderate to higher-income homeowners with good credit from applying for PACE in the first place. To them, because of their creditworthiness, some of the new paperwork requirements feel like an unjustified hassle, especially when compared to other financing options (which often don't come paired with the consumer protections and environmental benefits associated with PACE).

The third thing we learned is that many of the contractors who offered PACE financing to their customers in 2017 as a first option, now only offer PACE as a second option or last resort. This means that thousands of potentially eligible homeowners no longer hear about PACE at the critical moment they are making an energy decision for their homes. Because PACE financing (with its longer repayment terms that allow for lower monthly payments) isn't one of the options being presented to these homeowners, they have less of an incentive to purchase a more efficient HVAC unit (e.g., Energy Star). Unfortunately, this also means these homeowners will save less energy, pay more on their utility bills in the long run, and produce more carbon emissions.

These findings are reflected in the data. California's new statutory "Ability to Pay" standard went into effect on April 1st, 2018. On paper, the new standard should have reduced program activity by about 10%. However, the declines in program activity that we're seeing since April 1 are much more significant:

- Overall, PACE applications have decreased by 49% year-over-year (YoY)
- Number of contractors submitting at least 25+ applications/month is down 57% YoY
- Number of contractors with more than $200,000 of funded Renew Financial projects/per month is down 46% YoY

While it is impossible to pinpoint exactly how much of the overall decline is due to contractors no longer offering PACE financing to otherwise eligible customers (because of the perceived hassle), it is clearly significant.

To put a face on the challenge, here are three scenarios where a homeowner is currently prohibited or prevented from using PACE financing because of California's statutory underwriting requirements:

- A homeowner from Richmond with a 724 FICO score and reported household income of $96,000 – but who was late on one mortgage payment in the last 12 months. This homeowner is not able to use PACE based on current underwriting standards and other regulations.
- A homeowner from Yuba City with a 728 FICO score, a reported household income of $120,000 and more than 75% equity in their property – but who doesn't learn about PACE financing when she calls her contractor because one of the contractor's previous high-FICO customers grew impatient with the process and cost the contractor a sale. The contractor's motivation isn't to offer each homeowner the best financing available for that homeowner's financial situation, but only to complete each transaction as quickly as possible so they can move on to their next customer.

- A couple from Los Angeles County, one of whom has a FICO score of 733; their reported household income is $114,000. Unfortunately, this couple declared bankruptcy 7 years ago due to high medical bills. Last year, they missed a mortgage payment because they used the money to purchase a car for their daughter who just got into college. Despite being able to afford a PACE assessment to increase the efficiency of their home, this family is prohibited from using PACE based on current underwriting standards and other regulations.

As a result of California's current statutory requirements, thousands of homeowners who can afford PACE and who would definitely benefit from rooftop solar or an energy upgrade are either unable to make these upgrades or end up paying for them with higher interest rate and/or higher monthly payment financing options, which often have no consumer protections at all.

In short, we estimate that approximately 40% of California homeowners who would have otherwise qualified for R-PACE are currently either prohibited from using PACE, or are never made aware of PACE as an option, even though PACE could be the best option for them.

Strong consumer protections for R-PACE are essential, and the industry supports them. Yet, it is also true that the fundamental value of PACE financing as a policy tool is that it expands access to clean energy, while also saving energy, creating local jobs and reducing carbon emissions. If homeowners who can afford PACE can't access it for one reason or another, all of the economic and environmental benefits are diminished. We need to strike a balance.

Statutory Fixes Needed For R-PACE to Succeed in California

In 2017, AB 1284 was drafted and passed in a big hurry in the final month of California's legislative session. The PACE industry supported it. AB 1284 established California's DBO as the regulator for the PACE industry. AB 1284 also established a new "Ability-to-Pay" framework for R-PACE. Starting on April 1, we now gather income and debt information from every PACE applicant to make sure they have the resources to repay their PACE obligation. Not surprisingly for such a complicated law done in such a big hurry, it isn't perfect.

We have identified a couple of specific underwriting problems with AB 1284 that only California's State Legislature can fix. First, there are two problematic underwriting rules that automatically exclude homeowners from consideration – even before they have gone through an ability-to-pay analysis.

- If the homeowner has more than one late payment on their mortgage in the last year, they cannot be considered for PACE; and
- If the homeowner has declared bankruptcy as far back as 7 years ago, they cannot be considered for PACE.

Together, these two rules exclude about 30% of Renew Financial's R-PACE applicants. (Importantly, neither of these criteria disqualify a homeowner for a Fannie Mae-qualified mortgage.)

We looked back at customers from 2015-17, before the new statutory rules were put in place, and we found that these 30% of customers who are now being excluded from PACE financing *actually have a lower delinquency rate on their property taxes than other customers*. So, the new rules are excluding people who are a better credit risk than those who are being approved.

All homeowners should still have to go through an ability-to-pay analysis, but clearly, the homeowners who missed a single mortgage payment or declared bankruptcy seven years ago should not be automatically excluded from consideration.

The other major underwriting problem is that "high FICO" borrowers – those who have access to other financing options – are leaving PACE for financing options that aren't as much of a hassle. For these customers, the legislature needs to make an exception that streamlines the process for them. Otherwise, they won't use PACE financing to purchase higher efficiency equipment and the economic and environmental benefits of PACE will be lost.

Conclusion

With the statutory changes outlined above, we can get R-PACE back on its feet. But we need your help now. If you support PACE financing as an option for homeowners in California, please let the California Legislature know that you support the necessary changes.

PACE is the most successful energy efficiency financing program in California history, but in order for that to continue to be true, the Legislature must act now.

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